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Of Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

RAFAEL J. BARAJAS,

Plaintiff,

v.

CITY OF GRESHAM,

Defendant.

Civil No.: 3:19-cv-01636-SI

**PLAINTIFF'S FIRST AMENDED
COMPLAINT**

Action for Damages for
Negligence; Wrongful Arrest; False
Imprisonment; Failure to Train

DEMAND FOR JURY TRIAL

Plaintiff Rafael Barajas, through counsel, Jennie L. Clark, complains of City of Gresham (hereinafter "Defendant City").

1. VENUE

Venue is proper where the acts giving rise to the cause of action occurred, the City of Gresham, Multnomah County, Oregon.

2. PARTIES

Plaintiff, Mr. Rafael Barajas is a US citizen born in Silverton, OR.

3.

Defendant City is a duly organized municipal corporation, and a public body liable for the tortuous conduct of its agents and employees pursuant to ORS 30.260(4) and 30.265(1).

4. PRELIMINARY FACTS

All events referred to herein occurred between February 4, 2017, and March 22, 2018.

5.

On September 14, 2017, the day Plaintiff was arrested, he had had not committed a crime; nor was there probable cause to arrest him.

6. FACTS

On or after February 4, 2017 a City of Gresham employee(s) imputed incorrect data and photographic evidence into their database resulting in an incorrect arrest warrant for Plaintiff.

7.

On February 5, 2017 a person with a similar name as Plaintiff was in custody in Cowlitz County, Washington. This is likely the party that was the intended for the arrest warrant.

8.

On the evening of September 14, 2017 Plaintiff arrived in Houston, TX at the George Bush Intercontinental Airport, after flying from Mexico.

9.

Harris County Sheriff Deputies arrived at the airport and informed Plaintiff that there was a warrant for his arrest in Gresham, Oregon for Burglary in the First Degree – Constituting Domestic Violence, Felony Assault in the Fourth Degree – Constituting Domestic Violence, Felony Assault in the Fourth Degree, Felony Strangulation – Constituting Domestic Violence,

two counts of Recklessly Endangering another Person, Interference with Making a Report, and Reckless Driving. Plaintiff was placed in custody.

10.

On November 21, 2017 Plaintiff was transferred to Multnomah County Inverness Jail.

11.

On December 5, 2017, Multnomah County Circuit Court Judge Nan Waller issued a Court Order ordering that Plaintiff be released immediately, as he is the incorrect party being held in the case.

12.

On December 7, 2017, two days later, Plaintiff was finally released.

13.

Plaintiff spent approximately 84 days in a variety of Federal and local detention facilities.

14.

The underlying case against Plaintiff was not dismissed until March 22, 2018 by Judge Bushong. The dismissal stated, "It appearing to the court that the incorrect individual was identified on the indictment ... it is ... dismissed."

15.

During Plaintiff's stay at the Multnomah County Inverness Jail, Ms. Katrina Romero, Plaintiff's wife and the mother of his children, informed Plaintiff that she was leaving him. Ms. Romero asserted her belief that Plaintiff committed the crimes for which he was arrested. Plaintiff was estranged from Ms. Romero for sixteen months.

16. *RESPONDEAT SUPERIOR*

Under the doctrine of *Respondeat Superior*, City of Gresham and Multnomah County are responsible for all employees, and agents mentioned herein because all employees, officials, and

agents either worked for the City of Gresham, Multnomah County, or acted under the authority of an Oregon warrant issued by the Gresham Police Department, under the color of law.

17. TORT CLAIM NOTICE

Timely Tort Claim Notice pursuant to ORS 30.275 was submitted to the Gresham Police Department, and Multnomah County District Attorney's Office c/o Multnomah County Counsel on March 22, 2018 by Clark Law and Associates, LLC.

18. 1st CAUSE OF ACTION: UNREASONABLE SEIZURE OF PERSON

(FEDERAL- FOURTH AMENDMENT; 42 U.S. CODE § 1983)

Plaintiff re-alleges and incorporates paragraphs 4 – 17.

19.

Defendant City's employees, officials, and agents were unreasonable when an incorrect warrant was issued for Plaintiff which directly led toward the unreasonable seizure of Plaintiff, as Plaintiff's Fourth Amendment rights because he was arrested without a warrant or probable cause that he had committed a crime and unlawfully detained for 84 days without correcting the error that led to his wrongful arrest.

20. 2nd CAUSE OF ACTION: FAILURE TO TRAIN

(42 U.S. CODE § 1983)

Plaintiff re-alleges and incorporates paragraphs 4 - 17.

21.

Defendant City of failed to adequately train their employees, and agents when it is acceptable policy to serve an arrest warrant without properly identifying the person being arrested. No employee, or agent took reasonable steps to ensure that the correct individual was detained.

22. 3rd CAUSE OF ACTION: CAUSE OF ACTION: NEGLIGENCE (STATE)

Plaintiff re-alleges and incorporates paragraphs 4 – 17.

23.

Defendant City failed to use reasonable care when one or more of their employees failed to use reasonable care when he/she/they imputed incorrect data and a photograph into their database which resulted in an incorrect arrest warrant for Plaintiff.

24. 4th CAUSE OF ACTION: CAUSE OF ACTION: WRONGFUL ARREST (STATE)

Plaintiff re-alleges and incorporates paragraphs 4 – 17.

25.

Defendant City's employees, and/or agents, under the color of law obtained an arrest warrant based upon faulty information due to their error and caused Plaintiff to be wrongfully arrested.

26. 5th CAUSE OF ACTION: FALSE IMPRISONMENT (STATE)

Plaintiff re-alleges and incorporates paragraphs 4 – 18.

27.

Due to the false arrest, described herein, Plaintiff was imprisoned in multiple detention facilities.

28. ECONOMIC DAMAGES (Lost Earning Capacity)

As a result of all of causes of action listed above, Plaintiff suffered the loss earning capacity. Therefore, Plaintiff seeks \$4,920.00.

29. ECONOMIC DAMAGES FOR EXPUNGEMENT

As a result of his wrongful arrest (4th Cause of Action), Plaintiff's must file an expungement through the Multnomah County Circuit Court to prevent employment and housing discrimination and general loss of her reputation based upon his arrest. Fees and costs are \$850.00. Plaintiff, therefore, seeks \$850.00 for expunction fees.

30. ECONOMIC DAMAGES (Summary)

Plaintiff seeks economic damages for the total amount of \$5,770.00.

31. NON-ECONOMIC DAMAGES

Based on all the Causes of Action, Plaintiff suffered pain, fear, severe emotional distress, humiliation, mental anguish, a monumental infringement on his liberty during this incident. Additionally, Plaintiff was estranged from Ms. Romero for sixteen months, arising to a loss of consortium. These conditions make it difficult for him to go out in public in fear of being harassed and wrongfully arrested again. Therefore, Plaintiff seeks non-economic damages of \$960,000.00 from the City of Gresham.

32. ATTORNEY FEES (Federal Claims Only)

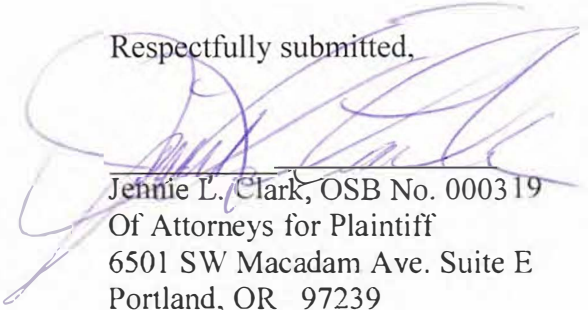
Pursuant to 42 USC 1988, Plaintiff is entitled to recover his reasonable attorney's fees and litigation costs incurred herein.

33. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant for Plaintiff's economic damages in the amount of \$5,770.00, and non-economic damages in the amount of \$960,000.00 for total damages in the amount of \$965,770.00. Plaintiff, therefore, prays \$965,770.00 in total damages from Defendant City. Plaintiff also seeks costs, disbursements on all causes of action and attorney's fees in relation to all Federal claims contained herein and any other relief that the Court deems just and equitable.

Signed and dated this 26th day of November 2019.

Respectfully submitted,


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